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JUN 25 2009

COURT OF APPEALS
DIVISION TWO

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0054-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DANELL McALISTER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-35163

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Danell McAlister

Florence
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Danell McAlister petitions this court to review the trial court's denial of his petition for post-conviction relief and subsequent motion for rehearing filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court's decision granting or denying post-conviction relief for an abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In 1992, McAlister was convicted of three counts of sexual conduct with a minor under fifteen, all dangerous crimes against children, and one count of sexual conduct with a minor under eighteen. He was sentenced to a total of eighty-six years' imprisonment. In this post-conviction proceeding, McAlister claims fundamental error occurred at his trial when the court disallowed impeachment evidence that he asserts would have proved his innocence. He further claims the court erred in not providing him with transcripts from his first trial, which had apparently ended in a mistrial, because the transcripts are the source of the purported impeachment evidence.

¶3 This court affirmed McAlister's convictions on appeal. *State v. McAlister*, No. 2 CA-CR 92-0878 (memorandum decision filed Sept. 6, 1994). McAlister subsequently filed multiple petitions for post-conviction relief, all of which were denied. *See State v. McAlister*, No. 2 CA-CR 2006-0159-PR, ¶¶ 2, 5 (memorandum decision filed Jan. 26, 2007) (summarizing history of post-conviction proceedings and denying relief on 2006 petition for review). In the current proceeding, the trial court correctly found McAlister's claims were precluded pursuant to Rule 32.2. *See State v. Shrum*, 220 Ariz. 115, ¶ 12, 203 P.3d 1175,

1178 (2009) (no post-conviction relief on grounds that were or could have been raised on direct appeal or in previous post-conviction proceeding). Therefore, the court did not abuse its discretion in summarily denying relief. Accordingly, although we accept review, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge